

Letter of Findings: 03-20140522
Withholding Tax
For the Years 2011, 2012, and 2013

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana car dealer failed to establish that he operated his business without any employees and that the Department's assessment of withholding tax was wrong.

ISSUE

I. Withholding Tax - Auto Dealer Employees.

Authority: IC § 6-3-4-8(a); IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); IC § 6-8.1-5-4(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that he operates his business without any employees and that the Department's assessment of withholding tax is unwarranted.

STATEMENT OF FACTS

Taxpayer operates a used car dealership as a sole proprietor. Taxpayer also buys and sells antiques, gold, silver, and guns at his business location.

The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's business records and tax returns. The audit resulted in an assessment of withholding tax. Taxpayer disagreed and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Withholding Tax - Auto Dealer Employees.

DISCUSSION

The issue is whether Taxpayer has provided sufficient information to establish that his used car dealership does not have any employees and was not required to pay withholding tax.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that, when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

A. Audit Results.

The Department's audit determined that Taxpayer did not retain business records for either car sales or car expenses. The audit requested that Taxpayer provide bank records. Taxpayer obtained copies of bank statements but did not provide copies of cancelled checks.

The Department's representative visited Taxpayer's business location on two occasions. One visit occurred at 8:30 AM and the second visit at 4:00 PM. Taxpayer was present at the time of the visits along with at least one other person. The Department's representative also phoned the business location on other occasions. Each call was answered by a person other than Taxpayer.

The audit report noted as follows:

It is apparent they keep fairly regular business hours and have at least one employee. The [T]axpayer was not registered for withholding tax and did not remit withholding tax to the state.

The audit concluded that Taxpayer "has one employee." The audit consulted "The Bureau of Labor Statistics Occupational Employment Statistics" and "estimated that there [was] one sales representative employed" at the car dealership.

B. Taxpayer's Response.

Taxpayer explains that he has no employees and the "business has always been a one person used car dealership." Taxpayer further explains that "he does have a relative who volunteers a few hours here and there" but that "he is not considered an employee and received no compensation for his time." During the hearing, Taxpayer's representative explained that there may be other friends and acquaintances who occasionally volunteered their time at Taxpayer's place of business.

C. Hearing Analysis.

Employers are required to withhold employee income taxes and remit those taxes to Indiana pursuant to the provisions of IC § 6-3-4-8(a) which provides in pertinent part as follows:

Except as provided in subsection (d), every employer making payments of wages subject to tax under [IC 6-3](#), regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department . . . Such employer making payments of any wages:

- (1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld....
- (2) shall make return of and payment to the department monthly of the amount of tax which under [IC 6-3](#) and [IC 6-3.5](#) he is required to withhold.

The audit assessed withholding tax on the ground that Taxpayer failed to maintain records sufficient to establish that the people working at his car dealership were not "employees" but were unpaid volunteers.

IC § 6-8.1-5-4(a) requires that taxpayers maintain and retain records sufficient to determine each taxpayer's liability. "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for tax by reviewing those books and records." In addition, IC § 6-8.1-5-4(c) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times." IC § 6-8.1-5-4(c).

Taxpayer operates a business with estimated revenue in excess of \$1,000,000 each year but failed to maintain business records. Under IC § 6-8.1-5-1(b), the Department is required to issue "a proposed assessment of the amount of the unpaid tax on the basis of the best information available." The affected taxpayer is entitled to quarrel with such an assessment but - in doing so - is required to establish that the proposed assessment is "wrong." Other than asserting that he has volunteers and casual acquaintances assisting him in operating his business, Taxpayer has failed to provide any substantive evidence or documentation establishing that the proposed assessment of withholding tax was incorrect.

FINDING

Taxpayer's protest is respectfully denied.

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